

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
March 28, 2017

A public hearing of the Zoning Board of Adjustment was held on Tuesday, March 28, 2017 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

Jack Currier, Chair
JP Boucher, Vice Chair
Mariellen MacKay, Clerk
Robert Shaw
Steve Lionel

Carter Falk, AICP, Deputy Planning Manager/Zoning

Mr. Currier explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Currier explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Currier also explained procedures involving the timing light.

1. **Crimson Properties, LLC, (Owner) 699 West Hollis Street (Sheet F Lot 423) & Judith Walker & Deborah Howe (Owners) 701 West Hollis Street (Sheet F Lot 59) appealing the decision of the administrative officer that a proposed elderly housing development is not considered by staff to be an elderly housing development; and that more than one principal structure would be allowed on one lot. R9 Zone, Ward 5. [POSTPONED TO 4-11-17 MEETING]**
2. **John J. Flatley Company (Owner) Expose Signs & Graphics (Applicant) 15 Tara Boulevard (Sheet A Lot 995) requesting the following variances: 1) to exceed maximum ground sign area for an existing sign, 150 sq.ft permitted, 256 sq.ft granted by Zoning Board on 5-12-15, permit issued for 239 sq.ft - an additional 36 sq.ft panel proposed; and, 2) to allow proposed sign panel for an off-premise site at 200 Innovative Way for use to be determined later. PI Zone, Ward 8. [TABLED FROM FEBRUARY 14, 2017 MEETING] [POSTPONED TO APRIL 11, 2017 MEETING]**
3. **Keri N. & Rhett S. Pitre (Owners) 18 Legacy Drive (Sheet B Lot 3178) requesting the following variances: 1) to encroach 4 feet into the 6 foot required right side yard setback; and 2) to encroach 4 feet into the 6 foot required**

**rear yard setback, both requests to install a 10'x14' shed.
R18 Zone, Ward 5. [POSTPONED FROM MARCH 14, 2017 MEETING -
MEETING CANCELLED DUE TO WEATHER]**

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay
Robert Shaw
Steve Lionel

Rhett Pitre, 18 Legacy Drive, Nashua, NH. Mr. Pitre said that they're asking for the variance to construct a shed. He said that he's going to amend the application and only encroach 2 feet into the right side yard setback, to help appease the neighbor, and will also only encroach 3 feet into the 6 foot required rear yard setback, so each request is less than what was advertised.

Mr. Pitre said he will have the shed nicely landscaped, and will have some tall grass around it. He said that for the hardship, he said he has the smallest lot in the development, which used to be a cow field, and now there are approximately 40 homes. He said his lot is .21 acres. He said he abuts conservation land in the rear.

Mr. Pitre said if he puts the shed on the left side of the property, it would be closer to conservation land, and it would serve better on the right side. He said that his abutter at 20 Legacy said it's fine. He said that it would not interfere with any of the neighbors, or aesthetics, it will be a new nice shed from Reeds Ferry.

Mr. Lionel asked what the roof height would be.

Mr. Pitre said that there were a couple options for the roof, but it is a lower pitched roof, and will meet the ordinance, it will be below twelve feet.

Mr. Lionel asked what the hardship would be by not putting it in the required setback.

Mr. Pitre stated that the space between the shed and the deck is a better area, and in order to get a vehicle around the back to

the walk-out basement, it would be more difficult if the shed were on the other side, especially with the vegetation that is planned.

Mr. Lionel said that when they put the shed in, there is a small pad that extends out from the shed.

Mr. Pitre said it would be a foot of crushed stone.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Currier to approve the variance application on behalf of the owner as advertised. Mr. Currier said that the variance has been amended, so that it is a 2 foot encroachment into the right side yard, and a 3 foot encroachment into the rear yard, so it's less than what was advertised. Mr. Currier said that the variance is needed to enable the applicant's use of the property, which is to maximize the usable yard space, and to keep the shed away from the Conservation area.

Mr. Currier said that the proposed use would be within the spirit and intent of the ordinance.

Mr. Currier said it will not adversely affect property values of surrounding parcels, and the Board was persuaded by the owner stating that there would be vegetation around the shed. He said that the request is not contrary to the public interest, and that substantial justice is served.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 5-0.

4. CPC Investments, LLC (Owner) 62-64 Lake Street (Sheet 101 Lot 60) requesting variance for minimum lot area, 23,590 square feet existing, 27,878 square feet required, to convert an existing two-family building into a 3-family building, and construct an additional five-unit multi-family building. RC

**Zone, Ward 6. [POSTPONED FROM MARCH 14, 2017 MEETING - MEETING
CANCELLED DUE TO WEATHER]**

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay
Rob Shaw
Steve Lionel

Richard Maynard, Maynard & Paquette Engineering, East Pearl Street, Nashua, NH. Mr. Maynard described the property location, it has a large two-family on it, and the lot has 23,590 square feet of land. He said that the plan is to convert the 8-bedroom existing two-family building into three units of three bedrooms each. He said that five new multi-family units would be built in the rear, each one would have a two-car garage underneath. He said that the existing detached garage would be razed.

Mr. Maynard said that the area is zoned RC but it's really a mixed use district, with multi-family, commercial, elderly housing, major nursing homes, and numerous little businesses. He referred the Board to the submitted area map, and there are 34 lots that have less than the RC zone required density of 3,484 square feet per unit. He said that of these, at least 25 properties have a residential density of less than 3,000 square feet per unit. He said that with the 8 units that are proposed in this development, the density would be 2,949 square feet per unit, which is just under the typical density in the neighborhood, he said it's very much in character with the neighborhood.

Mr. Maynard said it would be within walking distance of Main Street, and the Main Street Marketplace, aka Globe Plaza, and it's close to the downtown shops and services. He said that this project will help address a need for middle income housing within and close to the downtown. He said that the building has asbestos shingle siding, which will be removed and replaced. He said it's an older neighborhood, and new construction will definitely enhance property values. He said that substantial justice would also be granted by allowing this, and it will be in character with the neighborhood, and is very much in the spirit of the ordinance.

Mr. Shaw asked how many units could be placed here to meet the ordinance.

Mr. Maynard said 6.8, pretty close to 7.

Mr. Boucher asked if the building in the front is going to be re-habbed.

Mr. Maynard said that a lot of the porches will be taken off, the siding is asbestos and needs to be removed. He said that three units will be in this building.

Mr. Boucher asked how the units in the rear will be different.

Mr. Maynard said that there will be two different styles here, a rehabbed older building and modern buildings in the back with two-car garages.

Mr. Boucher asked about the square footages of the units in the front, versus the new construction.

Mr. Maynard said the ones in the back will be about 1,200 square feet, he said that the existing units are four bedrooms, about 1,600-1,800 square feet.

Mr. Currier said that the garage parking spaces under the building are analogous with the building to the east.

Mr. Maynard said that there will be two spaces under each unit.

Mr. Currier asked about the three spaces outdoors.

Mr. Maynard said that there are four spaces total, he said that there is a common driveway easement all along the property line that goes to the back, that both properties are allowed to use.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Further discussion ensued.

MOTION by Mr. Boucher to approve the variance application on behalf of the owner as advertised. Mr. Boucher said that the variance is needed to enable the applicant's use of the property, given the special conditions of the property, it is an existing structure on the lot, and a majority of the Board felt that the net effect of having two units or three units in the front building in the existing two-family building being converted may not be a net effect of that, as far as the density of people living there for that reason, and the Board identified the unique shape of the property, and that there are no other variances needed for the property as proposed.

Mr. Boucher said that the proposed use would be within the spirit and intent of the ordinance.

Mr. Boucher said it will not adversely affect property values of surrounding parcels. He said that they looked at a display of other properties are in the area, and compared it to the property next door, the 5-unit property, and this one is very similar. He said that the request is not contrary to the public interest, and that substantial justice is served.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

5. City of Nashua (Owner) Tim Cummings, Director of Economic Development, City of Nashua (Applicant) 44 Broad Street (Sheet 71 Lot 2) requesting use variance to allow for construction of a new building for retail use. GI Zone, Ward 4.

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay
Rob Shaw
Steve Lionel

Tim Cummings, Economic Development Director, City of Nashua. Mr. Cummings said that his application is pretty straightforward. He said that the land is a remnant parcel that was taken for the Broad Street Parkway; he said that the frontage of

the land was originally used for retail with the prior business that was there. He said that the use is consistent with the rest of this corridor now, and with the granting of this variance, will give us equal footing when the property is disposed of. He said that the City is in somewhat of a time crunch, as there are obligations with the State of New Hampshire and the Federal Government relative to the financing of the Broad Street Parkway.

Mr. Cummings said that an appraisal was done, and the City learned at that time that retail wouldn't be a by-right use. He said that by selling this, it will help to pay the bonds that are due for the Broad Street Parkway. He said that the approval of this wouldn't give the City any special treatment, and it will be in keeping with the existing conditions along the corridor.

Mr. Shaw asked if the drawing is sort of a "what-if" drawing, and not part of any real plan at this time.

Mr. Cummings said the drawing is a concept plan, and does articulate what a maximum build-out may have, but most likely we will see a 5,000 square foot structure, as opposed to the approximate 7,000 square foot structure on the drawing.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Tracy Dunne, 12 Long Avenue, Nashua, NH. Ms. Dunne said that there are several businesses in the area, and said that her concern was if the site would have a bar or a restaurant, something that would be open later. She asked how it would work if the use is changed.

Mr. Falk said that a bar or restaurant is a different use category in the City's Table of Uses in the Land Use Code. He said that the application is strictly for a retail use, so anything that is not retail would not be allowed.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Cummings said the corridor lends itself to more of a dry goods type of user, professional services, medical type of use, more of the traditional type of business operation. He said that they've already spoken with retail brokers who specialize in this type of development, and that is the thought process right now.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

None.

MOTION by Mr. Shaw to grant the variance as advertised on behalf of the applicant. He said that the zoning restriction as applied interferes with a landowner's reasonable use of the property, considering the unique setting of the property in its environment; no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property, and the variance would not injure the public or private rights of others. He said that this property has had a long historical use of retail purposes, and was more or less interrupted to construct the Broad Street Parkway, and now the time has come for the property to be sold by the City to allow for other usages, and with this variance, it will be limited to retail use, which is consistent with previous use, and will not necessarily have any burden on the surrounding community, there is a lot of mixed use in the area already, and this is a corridor with a lot of other retail use already.

Mr. Shaw said that the request is within the spirit and intent of the ordinance, there is no indication of any adverse effect on surrounding property values.

Mr. Shaw said it is not contrary to the public interest, and substantial justice would be served.

SECONDED by Mr. Lionel.

MOTION CARRIED UNANIMOUSLY 5-0.

6. Estate of Estelle B. Berthiaume (Owner) Lefavor Folio, LLC (Applicant) 266 Broad Street (Sheet 138 Lot 460) requesting the following variances: 1) minimum lot frontage, 60 feet

required, 50 feet proposed; and, 2) minimum lot width, 75 feet required, 50 feet proposed - to subdivide one lot into three lots. R9 Zone, Ward 1.

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay
Rob Shaw
Steve Lionel

Attorney Gerald Prunier, Prunier & Prolman, P.A., 20 Trafalgar Square, Nashua, NH. Atty. Prunier said that the site is one large lot off of Broad Street, the owner has passed away and now the estate is selling the property. He said that they want to keep the existing house, but they'll remove the existing garage, and the driveway would have to be moved to the other side of the house.

Atty. Prunier said that they can meet all of the requirements of the R9 district for density and setbacks, except for one. He said that for one of the proposed lots, the frontage provided would be 50 feet, where 60 feet is required. He said that is the case because they don't want to move the house, and the lot where the house is would remain a conforming lot. He said that the second variance is for the lot width, it is required to be 75 feet, and 50 feet will be provided. He said that the lot width requirement mainly refers to cul-de-sacs. He said that there will be two new houses, and the existing house is well-maintained.

Atty. Prunier said that the spirit and intent of the ordinance is being met, in that all the density requirements are met, and all the lots are larger than the minimum square footage. He said all of the setbacks for the houses would be met.

Atty. Prunier said that they've agreed to put up a screening fence as well. He said that the request will not negatively affect the property values of surrounding properties, as the houses will be new construction, and the existing house is in very good shape, and will provide a good use of the property.

Mr. Currier asked about a little structure, on the left side, and asked what it represents.

Atty. Prunier said he didn't recognize it.

Mr. Currier said that the proposed lot line is right adjacent to whatever this area is, and was just curious as to what it is.

Atty. Prunier said he would find out, he said that they're trying to minimize the amount of lot frontage that they're asking for.

Mr. Shaw asked if there was any consideration to try to do two driveways, or shared driveways, on New Hampshire Avenue, so that there's not a long driveway and the second driveway on Broad Street, he said that they'd end up with a frontage issue back there, but they'd be dealing with traffic that's not right on Broad Street, he said he wasn't sure if it would give a better lot configuration for placement of three homes.

Atty. Prunier said that their engineer tried to meet all of the ordinances to be as close as possible. He said that the lots will have a decent amount of open space, and will have nice yards for people with small children.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Jill Jason, 4 New Hampshire Avenue, Nashua, NH. Mrs. Jason printed some maps from the website, and on one dated February 14th, lot 460-2, which is next to her lot, looks ok, but on the February 27th drawing, the house is moved, and it's only 10 feet from her property line. She wanted to know which map is correct, and what the setbacks are.

Mr. Falk said that the front yard setback is 20 feet, 10 foot setback on the sides, and 30 feet in the rear, so the proposed house would meet the setbacks.

Mrs. Jason asked which of their two maps is correct.

Mr. Currier said that what is proposed before the Board tonight is the one with the house closer to Mrs. Jason's lot. He said it meets the 10 foot left side yard setback, and it looks about

12 feet away actually. He identified the setback line on the drawing, showing that the proposed house meets the setback.

Mrs. Jason asked about drainage and snow removal. She said that when it rains, they have a big lake area in front of their house, because there's no drainage. She asked if these people are just getting the approvals and selling them off, or building them.

Mr. Currier said that by law, any post development runoff of any lot cannot exceed the pre-development runoff. He said that is the responsibility of the civil engineer who designs the grading of the property. He said that it's unknown at this time who will actually be building the houses.

Mr. Shaw said that since this is a subdivision, it still needs to go to the Planning Board, and a lot of the utility questions will be answered. He said that there is a two-year window of approval after the Zoning Board's approval for them to obtain a building permit.

SPEAKING IN FAVOR - REBUTTAL:

Atty. Prunier said that the item he mentioned earlier is a narrow porch. He said that drainage and runoff cannot be any more than what exists now. He said that these issues will be addressed at the Planning Board meeting.

Mr. Shaw asked about the proposed placement of the dwelling that will have the driveway on New Hampshire Avenue.

Atty. Prunier said that first, there were concept plans made, and when he was asked to apply for a variance, he said he doesn't like to use concept plans because dimensions can change, so they had the property surveyed, and that is the second plan, that's why the house location changed.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

None.

MOTION by Mr. Shaw to approve the variance application on behalf of the owner as advertised, with all requests considered collectively. Mr. Shaw said that the variance is needed to

enable the applicant's use of the property, given the special conditions of the property, the Board found that there are unique circumstances surrounding this property, the existing square footage is approximately 35,000 square feet, and these lots in this R9 zone only require 9,000 square feet, so it would be possible to put almost four homes into this space, but it still would require an area variance. He said this would be utilizing the existing allowance for density, and another key factor is that the existing dwelling, in which the intent is to preserve the structure, is placed in such a way that it impedes the ability to have the second frontage and access from Broad Street such that it requires these variances to be issued. He said it might be possible by, instead of a slight flag-lot kind of shape, to have considered some sort of a "C" shaped configuration where there would have been an encroachment further onto the existing lot for 60 to satisfy these requirements, but not necessarily providing any real benefit for the existing or proposed new structure. He said that the Board noted that other considerations and options regarding the placement of the other two proposed dwellings and access to and from New Hampshire Avenue, and the general consensus of the Board is that the proposal to have the two units and two lots with having access to Broad Street, the proposal on the driveways also shows that turnaround, so that certainly helps prevent some sort of backing out onto Broad Street from either of those properties. He said that the proposed dwelling at the 460-2 lot shows it to be fairly close to the property line but still meeting the 10 foot required side yard setback. He said that per testimony, there is willingness from the applicant's part to provide a screening fence on the easterly side, and overall, this is a reasonable use

Mr. Shaw said that the proposed use would be within the spirit and intent of the ordinance.

Mr. Shaw said that there is no indication that there will be any adverse effect on surrounding property values of surrounding parcels. He said that the request is not contrary to the public interest, and that substantial justice is served.

He said that the added stipulations of a screening fence to be placed on the full easterly side, which is the abutting properties on Bailey Street, and also the addition of a screening fence between the westerly side of the property

abutting 4 New Hampshire Avenue, which will be almost the full extent of that westerly part of the proposed lot 460-2.

SECONDED by Mr. Currier.

Mr. Shaw said that they should try to place the proposed dwelling at lot 460-2 as much towards the center or the right side of the property, it's not necessarily a stipulation, but a recommendation.

Mr. Boucher said that the abutters are encouraged to go to the Planning Board meeting.

MOTION CARRIED UNANIMOUSLY 5-0.

7. Estate of Nadine Trask (Owner) Sequel Development & Management (Applicant) 30 & "L" Nagle Street (Sheet 102 Lots 83 & 84) requesting the following variances: 30 Nagle Street: 1) minimum lot area, 4,500 sq.ft existing, 6,000 sq.ft required, 2) lot width, 50 feet existing, 60 feet required, 3) to maintain and keep garage that would encroach 7 feet into the 7 foot required left side yard setback; "L" Nagle Street: 4) minimum lot area, 4,500 sq.ft existing, 6,000 sq.ft required; and 5) lot width, 50 feet existing, 60 feet required - all requests to construct a new house on "L" Nagle Street. RB Zone, Ward 6.

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay
Rob Shaw
Steve Lionel

Peter Dolloff, President, Sequel Development & Management, 2 Knightsbridge Drive, Nashua, NH. Mr. Dolloff said that they are in the process of purchasing the home, it's a very nice home and recently remodeled. He said that there are two lots in question, that by today's standards are non-conforming lots, and it appears as if both lots have always been owned by the same party. He said that they are looking to separate the lots so that they're not owned by the same person. He indicated that the zoning would allow a duplex on this property without coming before the Board. He said that the majority of the homes in the

neighborhood are single family homes, mostly on 4,500 - 5,250 square foot lots, which was pretty much standard when most of these homes were built.

Mr. Dolloff said that they're looking to separate the ownership between the two lots, they're both lots of record. He said the proposed house would meet all of the current setbacks. He said that the new house would be approximately 1,500 square feet in size, it will meet all setbacks as well. He said for the garage at 30 Nagle, and how it comes so close to the property line, he said that they looked at Dexter Street, Hunt Street and Nagle Street, and highlighted several other structures that fall within the setback and they found ten other properties that are in the setbacks, so it's not out of the character of the neighborhood. He said that they believe that their proposal is the highest and best use of the land. He said that when the garage was put on the house, it didn't appear to be built with the house, and since they owned the vacant lot next door, they weren't concerned about the setback.

Mr. Shaw asked about the applicant going forward with a duplex option.

Mr. Falk said that the lots would need to be combined, also, in the RB zone, each unit would require 6,222 square feet of land, so they'd need 12,445 square feet of land for a two-family, where 9,000 square feet exists.

Mr. Lionel said that the testimony was that there would be some sort of buffer between the new home and 30 Nagle, but the garage is right on the property line, and asked what type of buffer could be put in.

Mr. Dolloff said the home at 30 Nagle has a white vinyl fence surrounding it, so the plan is to re-configure the fence and run it right down the property line, so that there would be a buffer between the two lots. He said that an option would be to remove the garage, leaving more space, but it would also de-value the house as the garage is a sought-after amenity.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Mr. Currier said that there was a letter submitted by Claude Leger.

Claude Leger, 34 Nagle Street, Nashua, NH. Mr. Leger said that one of his concerns is the privacy, he said he's lived there since 1988. He said that the distance between the two homes at 30 Nagle Street and his home is not sufficient to cram a house in-between without affecting the value of his property, and the privacy. He said that their bedroom window is right on that side, and his house is very close to the line, and he's very concerned about his privacy, and the property values if selling becomes an option. He said that he's made a lot of changes and updating since he's been there, and values his property.

Mr. Leger submitted a petition signed by fourteen people on the street, all in opposition to the request, and most of these people are abutters or live very close by.

Mr. Boucher asked if there was a 6-foot tall fence on the property line, would it help appease some of the privacy issues.

Mr. Leger said not really, now they have a fence that tapers down.

Mr. Boucher asked if there were none, or minimal windows on the site, if that would help.

Mr. Leger said no, they would still be squeezing a house in there on a small lot, and they need a lot of variances to do so, plus, there would be another driveway closer.

Mr. Shaw asked Mr. Leger how close his house is to the side property line.

Mr. Leger said that it's whatever the minimum is, perhaps a little less.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Dolloff said he understands the concerns. He said that the house they plan to build has a right-loaded garage, so the house could be placed close to the right side yard setback as possible, so it's garage to garage. He said the proposed house is 32 feet wide, and there is a 36 foot building envelope, so

there could be 9 or 10 feet to the left property line. He said that the home they've chosen would fit the character of this neighborhood, and would increase the values in the neighborhood.

Mr. Shaw asked if the proposed house would have windows on the left side.

Mr. Dolloff said it does have two living room windows, but they're more to the back of the home, also, they can push the home back a bit to offset it from Mr. Leger's, and create a bigger front yard. He said it would be a two-story structure.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

None.

Mr. Lionel asked why the variances are necessary for 30 Nagle Street.

Mr. Falk explained that there are two lots, both always owned by the same entity for decades. He said that the ordinance states that if you transfer ownership of a contiguous lot, you cannot do so if you cannot meet the ordinance. He said that right now, its one house on a 9,000 sq.ft lot, and by selling off one of the lots, there would be two houses, each on 4,500 sq.ft lots, where the Code requires 6,000 sq.ft lot size, so this action would create two non-conforming lots.

Mr. Lionel said he can't support this proposal, as the undeveloped lot is too small to construct a house that would be in character with the neighborhood, it's only three-quarters the required size, and there are a lot of neighbors who have objected.

Mr. Shaw said that the concern he has is if the Board doesn't approve the variances, then perhaps we are continuing to force the same ownership of the two lots. He said if the current ownership is supposed to be able to sell and handle those two lots in separate actions, then we would be preventing their ability to use that property. He said another concern is if we're doing that, we are basically allowing what's being treated and existing for all essential purposes a conforming 9,000 square foot lot into two separate non-conforming lots, and even if we don't approve anything else with the variances, we could get caught up in the State RSA's to have a lot that exists in

separate ownership, and no one can build a house on, without granting them some additional variances, because it wouldn't meet the area requirements.

Mr. Falk said it can hamper some property owners from selling off one of their lots. He said that a lot of the older neighborhoods in the City, when the lots were platted over one hundred years ago, a lot of the lots were even smaller, they were 25 or 40 foot wide lots, and people would buy two or three of them together. He said this situation has come into play many times, where someone owns two contiguous lots and wants to sell one, and some of them may only need one or two variances, where this one needs five variances. He said that the total land here is 9,000 square feet, where 6,000 square feet is the minimum lot size for a single family home.

Mr. Falk said that Assessing, Building, and Zoning Departments would combine these lots for zoning or tax purposes, perhaps involuntarily, to help make one conforming lot, even though there may be two deeds. He said that Planning staff doesn't really get involved with tax and financial matters. He said that there was a recent revision to the RSA's that said that Zoning and Assessing Departments can't necessarily combine contiguous lots involuntarily without the owner's permission, however, that doesn't stop them from coming to the Board, they still have to come to the Board for lot area or other dimensional matters, as it doesn't absolve them from doing whatever they want without ever coming to the Board. He said that staff could not have approved this administratively, as it would go in the direction of creating two nonconforming lots.

Mr. Falk said that the RSA's state that they understand that Assessing, Tax, Zoning Departments do involuntarily merge these lots to make it a conforming lot, we can't really do that now, however, they can't just go from the existing conditions to two nonconforming lots, where both lots don't meet any dimensions for approval. If Staff were to be doing this, we would be allowing anyone who has contiguous lots to just start selling them off and people would be building houses on very small lots, thereby creating nonconformities all over the City, especially in the inner City.

Mr. Shaw said that he felt that they were being forced into a must-act, taking issue.

Mr. Falk said for a taking, that is a pretty strong action, it's when someone has no reasonable economic or use of their land at all for anything. He said that the courts would say that this is a 9,000 square foot lot, with a single family home on it, and the lot is 3,000 square feet larger than the minimum size, they'd see that as it already has reasonable use, so the taking issue would most likely not be supported.

Mr. Shaw said that he felt that this is too much relief being needed to place a second home. He said that another house here could be too imposing on the neighborhood, and too much relief.

Mr. Boucher said that there are two separate lots, and many years ago, there could have been something done here. He said it may not rise to a taking, but is uncomfortable that we're not missing something.

Mrs. MacKay said she thinks the project is ambitious. She said that the lot size is way too small, and it doesn't seem like there will be enough land on either side. She said 4,500 square feet for each lot just doesn't seem logical, and with fourteen signatures of people who are not supportive speaks volumes. She said it's just too disproportionate, and too impactful.

Mr. Currier said that the lot is undersized, and in this case, said he is persuaded by Mr. Leger's testimony. He said that he has confidence in Mr. Dolloff's work, but said that he felt that it is too much, and for many of the reasons that have been already stated.

MOTION by Mr. Shaw to deny the variance requests, all taken collectively in this motion, as they're all intertwined and fully related, on behalf of the applicant. He said that the Board did consider the special circumstances that there is common ownership, but it exists as two separate lots now, that existed under common ownership for a very long time, perhaps since when this part of Nagle Street got developed, and the lots that were deeded out at the time, also, would have pre-dated zoning, and these lots in their existence in the RB zone, as a 4,500 square foot lot, 50 feet wide lots don't meet the existing code, and so to divide the ownership and have two separate ownerships to pursue the construction of a second home, and to maintain the existing home would require multiple variances and relief to accommodate that, and in this area of Nagle Street, many of the surrounding properties are already on lots that are

larger than the required square footage, and so this is not in keeping with the local character of the neighborhood, and also would have a significant effect on the property at 34 Nagle Street due to the placement of that home very close to the side yard setback.

Mr. Shaw said that the Board does not see how going from a single-family home occupying a 9,000 square foot lot to two properties occupying this on significantly undersized lots would be something that is supportable, and too much relief being sought, so therefore, it's not within the spirit and intent of the ordinance.

Mr. Shaw said that there is significant concern, although no expert testimony was submitted, but there was testimony about property values being negatively affected, he said it is contrary to the public interest, and substantial justice would not be served.

SECONDED by Mr. Lionel.

Mr. Boucher said that his reason for denial is for the right of the owner to develop a legal lot of record.

MOTION CARRIED 4-1 (Mr. Boucher)

8. Jonathan D. & Katherine M. Stavely (Owners) 14 Marian Lane (Sheet B Lot 1849) requesting the following variances: 1) to encroach 1 foot into the 10 foot required right side yard setback; and, 2) to encroach 22 feet into the 30 foot required rear yard setback - both requests to remove and replace existing deck that is encroaching 17 feet into the rear yard setback. R9 Zone, Ward 9.

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay
Rob Shaw
Steve Lionel

John Stavely, 14 Marian Lane, Nashua, NH. Mr. Stavely described the variances that they are requesting. He said they'd like to tear down their existing deck and to construct a newer deck. He

said that the hardship they face is that the house is positioned in such a way that any type of deck built off the back of the house would require a variance. He said that the house is 32 feet from the back boundary line. He said that property values of surrounding lots will not be impacted, and they're simply tearing down an old rotted deck that has become quite an eyesore and replacing it with a nicer, safer deck that will be aesthetically pleasing.

Mr. Stavely said that they are requesting the deck be four feet longer, to accommodate a larger table and chairs.

Mr. Currier said that it looks kind of downhill, and in back of a fence.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Carla Benjamin, on behalf of Killian Place Condos, Nashua. Ms. Benjamin said she works for the property management company. She showed the Board a picture. She said that the association has two concerns; one is that it encroaches too close to the property line where the fence is. She showed how unit 15 on Killian Drive would be impacted. She said the new deck would be close to their property, and their privacy would be compromised. She said that they already have a deck there, and if the deck is being replaced because it's unsafe, she said she didn't see why they'd need to build a larger deck.

SPEAKING IN FAVOR - REBUTTAL:

Mr. Stavely said in looking at the photo, he didn't see his deck on it, and said the photo isn't his house.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Ms. Benjamin said that the association will file for an appeal if this is supported.

Further discussion ensued about the accuracy of the photo, and if it actually was the Stavely's house.

Ms. Benjamin said that she'd have to go back to the Association to verify if it's the right photo. She said that they will be appealing if the deck is approved.

Mr. Boucher asked if their objection is just to the extra four feet, or to the existing deck being there.

Ms. Benjamin said it's an objection to it coming closer to the chain-link fence, and having it closer to unit #15 on Killian Drive.

Mr. Boucher said that there appears to be a pretty good buffer here, compared to other applications the Board sees.

Mr. Shaw said that procedurally, they don't just get the right to appeal a decision the Board makes, they can file for a rehearing request if they don't agree with the decision, and then the Board will take into consideration what is submitted with the request, and it is up to the Board to determine if the case is going to be reheard.

Mrs. MacKay said that there is an arbor closer to the fence than what the new deck would be. She asked why there was no objection to the arbor. She said if the picture was taken today, then the arbor must still be there.

Ms. Benjamin said she'd have to verify if the photo was taken of the correct yard.

Mr. Currier asked Mr. Stavely if the picture we have here is their yard.

Mr. Stavely said the photo is not his back yard, he said he thinks it's 18 Marian Lane, it's a yellow house. He said that the arbor in the back was once larger, and Killian Place put up a fence about 5 years ago, and they told us we had to take down a part of the arbor, and they were completely happy with it. He said that the arbor was there before he moved in, and a neighbor cut down a lot of trees, which prompted them to put up a fence. He said that apparently a portion of the arbor was on their property, according to a survey. He said that they were then ok with the arbor, but they really won't see the deck in the summer, as it is heavily wooded.

Mr. Currier said he believes that there is a mistake with the photo, and that it's not the Stavely property, and believes that the Stavely property is situated with ample room behind it, and is ok with their application.

Mr. Boucher agreed, and the extra four feet that they're requesting for the deck is impactful enough, and it shouldn't create any more noise for the neighbors, it pretty dense back there, and is in favor of the application.

Mr. Shaw said he's supportive of it too, and the request is consistent with what many of the neighbors have, many of them are setback far in the property, and there are sheds, pools already located in similar placements, and didn't see how the extra encroachment would be impactful.

Mr. Lionel said he's supportive as well, and noted that 15 Killian is oriented diagonally opposite where the deck would be, and there is a large expanse of foliage between it and the deck, and 17 Killian is even further away.

Mrs. MacKay said she is in support, and the existing arbor is even closer, and an extra four feet for the deck won't even be as far back as the arbor, and doesn't understand their argument, and is in complete support of the application.

Mr. Currier said he thinks the yellow house is #20 Marian Lane.

MOTION by Mr. Lionel to approve the variance application on behalf of the owner as advertised. Mr. Lionel said that the variance is needed to create a slightly larger deck space.

Mr. Lionel said that the proposed use would be within the spirit and intent of the ordinance.

Mr. Lionel said it will not adversely affect property values of surrounding parcels, there is apparently sufficient foliage with it and sufficient space to the properties on Killian Place.

He said that the request is not contrary to the public interest, and that substantial justice is served to provide a more functional deck.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

MISCELLANEOUS:

MINUTES:

2-14-17:

Mr. Shaw said that there is a typo on page 28, the last page, it says "Boar" instead of "Board".

Mr. Falk said the correction will be made.

Mr. Currier mentioned the bottom of page 13, for the 122 Manchester Street case, there were a series of definitions of elderly housing. He said his recollection was that there were five heads shaking "no", and he said he didn't call for a vote from each individual person for a "yes" or "no". He said the one at the bottom of page 14, it was the continuing care retirement, and on page 15, it says Mr. Currier said he sees "two no's", "three no's", and that adds up to five "no's". He said that the way the minutes are, it's not clear, as we were looking at each other and there were heads shaking. He said that there were all these categories, with the last one being the middle of page 15. He said that he is seeking an amendment to the minutes to clarify that the Board had five "no's" right down through where it says Mr. Shaw said that the question for him comes down to typically, the care includes room and board, supervision, and the discussion ensued from there.

Mrs. MacKay said that this was the most thoroughly vetted case she's sat on. She said that Mr. Currier did ask each individual person for each individual item as we went down line by line.

Mr. Falk said that the minutes for this case were done pretty much verbatim, or at least 99% verbatim. He said that this case will definitely be going to Court, they'll listen to the tapes, and look at the minutes, and staff doesn't believe that we should write in something that wasn't exactly said at the meeting. He said the minutes should accurately reflect what was said. He said these minutes were pretty much exactly what people said, and nothing else. He said for future reference, perhaps when the Board goes around for comment, everyone should have their name said into the record, and then that Board member can speak.

Mr. Lionel said that this is really a transcript, not what he could call minutes.

Mr. Falk said that full minutes, with the line numbers on the side, are somewhat different, like what a court reporter would do, are much more involved, he said he just writes down what people say.

Mr. Lionel said that the outcome doesn't change, the Board voted against it.

Mr. Shaw said it's pretty clear what the focus was, there was enough of a discussion to validate what the concerns were, and the discussion was very thorough.

Mr. Currier said he is glad we've had this discussion, and is ok with leaving it as is.

Mr. Shaw said if they see the video tape, they'll see the observations from the video.

Mr. Currier said it's a good lesson learned, in doing a poll from the Board.

MOTION by Mr. Currier to approve the minutes with the change on the last page, waive the reading, and place the minutes in the file.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

2-28-17:

MOTION by Mr. Currier to approve the minutes as presented, waive the reading, and place the minutes in the file.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

REHEARING REQUESTS:

None.

REGIONAL IMPACT:

The Board determined that there are no cases that involve regional impact.

BY-LAWS:

Mr. Falk said he'd forward a copy of the By-Laws to the Board for the next meeting, without the red-lined changes in it, so it will be a final version, ready for signature.

ADJOURNMENT:

Mr. Currier called the meeting closed at 9:49 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing